IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8507 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

CHANDUBHAI M PARMAR

Appearance:

MR HARDIK C RAWAL for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 23/09/1999

ORAL JUDGEMENT

Learned Advocate Mr.Raval is appearing for the petitioner Corporation. The respondent has been served.

The facts of the present case in short are that the respondent was employed as a Conductor by the

petitioner Corporation. In the course of his duty as such, on 26.1.1983, in a bus plying between Khambhat to Ambaji, it was found that the respondent had reissued ticket no.41525 for Rs.8/- which was already issued on a previous day and that he had also collected fare of Rs.86.40 ps. from four passengers travelling between Khambhat to Ambaji but has not issued tickets to those passengers. A regular departmental inquiry was initiated against the workman and ultimately he was discharged from service by an order dated 14.7.1983. Said order of punishment passed by the petitioner Corporation was challenged by the respondent workman before the Labour Court, Nadiad at Kheda by filing Reference No. 1097/1983. The Labour Court has considered the evidence on record and perused the inquiry papers which was produced before the Labour Court. Before the Labour Court, the respondent workman has not challenged the legality, validity and propriety of the departmental inquiry initiated against him. The respondent was examined at Exh.19. He had admitted that the tickets were reissued by him. He also admitted that the said misconduct was committed by him through oversight and bonafide mistake. It was explained by him that the said tickets were kept by him for the purpose of accounts and through oversight they were reissued. The Labour Court in terms came to the conclusion that it is a case of misconduct of misappropriation committed by the respondent workman and in past also, about 14 misconduct were committed by the respondent and considering his age one chance was given to the respondent workman, the Labour Court observed that looking to the misconduct the impugned order of punishment is harsh and unjustified. The Labour Court therefore, directed the petitioner Corporation to reinstate the workman with continuity of service and without backwages with an additional punishment of stoppage of two increments.

Mr.Raval, Learned Advocate appearing for the petitioner has submitted that in such case of misappropriation of the funds of the Corporation, the Labour Court, while exercising powers under Section 11-A of the I.D. Act has failed to apply its mind. The Labour Court has erred in reinstating the workman. According to him, denial of back wages for the intervening period cannot be considered to be sufficient punishment because the workman has committed serious misconduct of reissuing tickets and also not issuing the tickets to the passengers from whom he had collected the fare. According to him, in view of such misconducts and also in view of his past record, over and above the denial of backwages and stoppage of 2 annual increments, the Labour Court ought to have imposed some more punishment.

I have considered the submissions made by Mr.Raval. I have also perused the papers on record and the impugned award passed by the Labour Court as also the past record of the respondent workman. Taking into consideration the principles laid down by the Apex Court in the decision reported in AIR 1984, SC 976 as also the decision of this Court reported in 1994 IInd LLJ 1113, the question is required to be examined in light of the provisions made under Section 11-A of the I.D. Act. The powers have been given to the Labour Court, Industrial Tribunal and the National Tribunal. In relation to Industrial Disputes relating to discharge or dismissal of the workman for adjudication and in the course of adjudication proceedings, if the Labour Court, Industrial Tribunal or the national Tribunal is satisfied that the order of discharge or dismissal was not justified it may, by its award, set aside the order of discharge or dismissal and direct the reinstatement of the workman on such terms and conditions as it may think just and proper or may given such other relief to the workman including the award of any lesser or lighter punishment in lieu of the punishment of discharge or dismissal as the circumstances of the case may require. While exercising the powers under Section 11-A of the I.D. Act, the Labour Court shall rely only on the material on record and shall not take any further evidence in relation to the matter. In exercise of such powers if the Labour Court or Industrial Tribunal or the National Tribunal as the case may be comes to the conclusion that the order of discharge or dismissal is harsh and unjustified looking to the misconduct alleged to have been committed by the workman, then the Labour Court is justified in setting aside the order of punishment. In the instant case while exercising such powers, the Labour Court has found that the order of punishment was harsh and unjustified and therefore, keeping in view the misconduct committed by the respondent workman the Labour Court directed his reinstatement while denying the backwages and further directed to stop his two annual increments with future effect. The submission of Mr.Raval that denial of back wages cannot be considered punishment sufficient for the misconduct in question cannot be accepted. I am of the opinion that looking to the past record of the respondent workman, some more punishment is required to be imposed upon the workman. It would be just and proper if three annual increments are ordered to be stopped instead of two annual increments as directed by the Labour Court with future effect. The impugned award of the Labour Court is required to be modified to that extent. I am of the opinion that the stoppage of increment should be

given effect from 1.1.1999 so that it may not result into reduction of the pay packet of the workman and there may not be any question of any recovery pursuant to such stoppage of increments with future effect.

This petition is partly allowed. The impugned award of the Labour Court is modified and it is directed that instead of two annual increments, the petitioner Corporation shall stop three annual increments of the respondent workman with future effect w.e.f. 1.1.99. Rule is made absolute to the above extent with no order as to costs. Interim relief granted earlier same shall vacated.

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